

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3970 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

KIRITKUMAR MOHANLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner

MR VB GHARANIYA,AGP for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 12/03/98

ORAL JUDGEMENT

1. The petitioner who was an Assistant Engineer was promoted to the post of Deputy Executive Engineer by an order dated 23rd March 1984. There was some error in showing the station of his present posting i.e. instead of Baroda, it was wrongly mentioned as Palanpur. Therefore, the order was modified and corrected on 17th April 1984. As the petitioner did not report at the place of promotional posting, the promotion order was

cancelled on 21st August 1984.

2. By another order dated 3rd July 1986, eight other persons were promoted. However, the petitioner's case was not considered and the petitioner was not promoted.

3. At that stage, the petitioner has filed the present petition on August 5, 1987 praying that the petitioner's case for promotion to the post of Deputy Executive Engineer be considered retrospectively on the same lines as the cases of petitioner's juniors have been considered for such promotion.

4. In the affidavit-in-reply filed by Shri JA Pandya, Under Secretary, in para 3, it is stated that the petitioner was considered for promotion and he was in the select list dated 30.6.1982. On the basis thereof, he was promoted on 23rd March 1984. Since the petitioner did not join, the said order of promotion was cancelled on 21st August 1984.

5. It may also be noted that by a letter dated 7th July 1984, the petitioner himself had requested that he was working at Baroda and his family and children were at Baroda and having regard to the education of the children, he requested for posting at Baroda or at nearby station. This request is obviously not granted and the promotion was cancelled.

6. The learned Counsel for the petitioner has also submitted that though the promotion order was of 3rd March 1984 and was modified on 17th March 1984, the order was not received in his office till 16th July 1984 as seen from the endorsement at Annexure A (page 8) and he had not been relieved from his office and, therefore, he could not join. However, the letter of the petitioner himself dated 7th July 1984 shows that he was fully aware of the order and in fact, he refers to his letter in continuation of the promotion order and his name at serial no. 15 in that order. Therefore, the affidavit of the Executive Engineer dated 14th October 1996 seems to be correct when he avers that the applicant had already inquired on 17th April 1984 and, therefore, the question of his not knowing about the promotion order does not arise.

7. Even after this cancellation of the order of promotion on 21st August 1984, the petitioner did not make any grievance for two years either before the authority or before the Court. Therefore, it is clear that the petitioner did not want promotion coupled with

transfer and, therefore, he had voluntarily forgone the promotion. Otherwise, he would have immediately protested either departmentally or through Court.

8. However, on 3rd July 1986, when eight other promotions were effected (para 7 of the petition), the petitioner naturally felt aggrieved and he approached this Court.

9. Here, the petitioner is on a better ground. The petitioner was in the select list and he was actually promoted. Even though he might have voluntarily forgone the earlier promotion because of his personal circumstances, it cannot be said that he loses right to promotion for all time to come. Therefore, when eight other persons were promoted by order dated 3rd July 1986, the petitioner's case for promotion could not have been ignored. In the affidavit-in-reply, this para 7 of the petition is not answered at all.

10. In view of the above, direction is required to be issued to grant the case of the petitioner for promotion alongwith the cases of eight persons who have been promoted by order dated 3rd July 1986.

11. In the result, the petition partly succeeds and rule is made absolute by directing the respondent authorities to grant the case of the petitioner for promotion to the post of Dy.Executive Engineer with effect from the date eight other persons were promoted by order dated 3rd July 1986.

Rule made absolute accordingly with costs.

mhs/-